

**PROGRAMMATIC AGREEMENT AMONG  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY;  
LOUISIANA STATE HISTORIC PRESERVATION OFFICER;  
MISSISSIPPI STATE HISTORIC PRESERVATION OFFICER;  
AND  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S  
HAZARD MITIGATION GRANT PROGRAM EXCEPTION  
(GULF COAST HMGP PA)**

**WHEREAS**, the Federal Emergency Management Agency (FEMA), of the Department of Homeland Security, proposes to provide assistance with funds from the Hazard Mitigation Grant Program (HMGP) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), its implementing regulations, 44 CFR Part 206, to the States of Louisiana (LA) and Mississippi (MS) to assist property owners who suffered damage from Hurricanes Katrina (DR-1603-LA, DR-1604-MS) and Rita (DR-1607-LA) in 2005 (the Disasters); and

**WHEREAS**, through existing Federal-State agreements, FEMA has and will continue to provide HMGP assistance to the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) in LA, and the Mississippi Emergency Management Agency (MEMA) in MS (Applicants); and

**WHEREAS**, the objective of the HMGP is to enable the implementation of long-term hazard mitigation measures during the immediate recovery from a disaster to reduce the loss of life and property from a future disaster; grants under HMGP are made available statewide, and; the hazard mitigation activities funded may not necessarily relate to the damages caused by the Disasters but are intended to accomplish hazard mitigation beyond that which would otherwise be addressed independently; and

**WHEREAS**, under HMGP requirements, projects initiated or completed prior to FEMA approval typically are not eligible for funding; and

**WHEREAS**, in the aftermath of the Disasters, some individual property owners and communities in the impacted areas of LA and MS proactively engaged in hazard mitigation activities in an effort to recover from the damages and mitigate at-risk properties against future damage and such activities may have been eligible for funding under the HMGP had they obtained FEMA approval before the activities started, and

**WHEREAS**, the Disasters decimated the capability of local governments in the impacted areas of LA and MS and left communities without resources to assign to the identification, development, and timely application and implementation of hazard mitigation initiatives under the HMGP and communities in these impacted areas were at a distinct disadvantage insofar as engaging in the required HMGP application process until more than two years after the Disasters; and

**WHEREAS**, these unique circumstances did not occur in any other Gulf Coast State(s) in the aftermath of the Disasters, and FEMA is not aware of any other situations where virtually all communities affected by a major disaster were impacted to such an extent as to be severely hampered in developing and submitting hazard mitigation applications within the established HMGP timeframes; and

**WHEREAS**, there is concern that regulations intended to facilitate the provision of HMGP funding, including associated environmental and historic preservation (EHP) responsibilities, were designed to respond to smaller-scale disasters, and that the Disasters occurred on such a massive scale that the circumstances warrant a modification of the administration of those EHP compliance responsibilities in order to provide

critical financial assistance to property owners in a more timely manner than would be possible under the standard requirements; and

**WHEREAS**, the term “property owners” is defined as the ultimate recipient of HMGP funding used to carry out the Undertakings. Funding is made available from FEMA to GOHSEP and MEMA, who in turn make funds available through Sub-Grant agreements to eligible entities including State governments, local governments (acting on behalf of individual homeowners and businesses), Indian tribes and tribal organizations, and certain private non-profit (PNP) organizations (such as those that perform a governmental function).

**WHEREAS**, in light of these nationally unprecedented circumstances, and because of the high national priority, as articulated by the President, members of Congress, Governors of the States, and the public, to accelerate the process of rebuilding on the Gulf Coast without further delay, FEMA has requested and received a waiver from the Executive Office of the President/Office of Management and Budget allowing FEMA to develop a framework for implementing a limited exception to Federal program requirements (HMGP Exception) that would allow certain eligible hazard mitigation actions initiated without prior FEMA approval before the effective date of such a HMGP Exception, and implemented in the course of repair activities on structures and facilities (as defined in the Stafford Act) damaged by the Disasters in LA and MS, to become eligible for grant consideration (Pre-Effective Date Undertakings); and

**WHEREAS**, FEMA may also fund certain hazard mitigation actions initiated without prior FEMA approval on Disaster damaged structures and facilities within 60 days of the effective date of the HMGP Exception (Grace Period Undertakings); and

**WHEREAS**, FEMA may also fund all other eligible hazard mitigation actions that will be initiated in all parishes of LA and all counties of MS following FEMA approval (Standard Undertakings); and

**WHEREAS**, by funding the Pre-Effective Date, Grace Period, and Standard Undertakings under the HMGP (collectively, the Undertakings), FEMA will be triggering the requirements of Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and its implementing regulations, 36 CFR Part 800; and

**WHEREAS**, the Area of Potential Effects (APE) for the Undertakings in LA includes all the parishes in the State of LA; the APE for the Undertakings in MS includes all the counties in the State of MS; and

**WHEREAS**, FEMA has determined that the Undertakings may have effects on properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) (historic properties) and in accordance with 36 CFR Part 800 implementing Section 106 of NHPA must address these effects; and

**WHEREAS**, because of the scale of the Disasters, the number of anticipated projects, and the vital necessity to provide support to property owners without further delay FEMA will conduct modified Section 106 reviews in accordance with the provisions of 36 CFR §800.14(b); and

**WHEREAS**, because of severe time constraints associated with FEMA’s compliance with National Environmental Policy Act (P.L. 91-190, 42 U.S.C. 4321 and 4331-4335) requirements which direct the agency to evaluate potential impacts to the human and natural environment resulting from the agency’s proposed implementation of this exception, and in order to ensure that effects on historic properties are considered within the draft Programmatic Environmental Assessment (PEA) submitted for public comment beginning on October 21, 2007, FEMA has developed this Gulf Coast HMGP Programmatic Agreement (Gulf Coast HMGP PA) outlining the process for future consultation among the LA SHPO, MS SHPO, the Applicants, Advisory Council on Historic Preservation (ACHP), Mississippi Band of Choctaw Indians (MBCI), other participating Tribes, and other consulting parties, to conclude the Section 106 review process, and incorporated into the approved Finding of No Significant Impact (FONSI); and

**WHEREAS**, FEMA has determined that the restrictions of Section 110(k) of NHPA do not apply to the Pre-Effective Date Undertakings conducted by most property owners on or before the effective date of the HMGP Exception due to the extraordinary circumstances of the Disasters, and in recognition that property owners did not knowingly and intentionally carry out these activities to avoid the requirements of Section 106 of NHPA; and

**WHEREAS**, FEMA will comply to the fullest extent possible with Section 110(k) of NHPA for Grace Period Undertakings and will not provide assistance to property owners who intentionally adversely affect historic properties during the Grace Period unless FEMA, in consultation with the ACHP and LA SHPO for Undertakings in LA, and the ACHP and the MS SHPO for Undertakings in MS, determines that such assistance is warranted despite the adverse effect(s) created; and

**WHEREAS**, in recognition of its Section 110(k) responsibilities, FEMA will exclude HMGP-eligible historic public and PNP facilities from the Grace Period and will conduct Section 106 review of these facilities in accordance with Stipulation VI of this Gulf Coast HMGP PA; and

**WHEREAS**, FEMA has previously executed Statewide Programmatic Agreements (Statewide PAs) with the LA SHPO, MS SHPO, GOHSEP, MEMA, and the ACHP to satisfy FEMA's responsibilities pursuant to NHPA for all Undertakings funded or assisted by FEMA as a result of Federally declared disasters; that include conditions directly or indirectly related to FEMA's responsibilities as set forth in Section 106; and

**WHEREAS**, because these previously executed Statewide PAs do not provide specific methods with which to carry out FEMA's responsibilities pursuant to NHPA in these unprecedented circumstances FEMA has executed this Gulf Coast HMGP PA, pursuant to 36 CFR §800.14(b), and will consult further with the LA SHPO, MS SHPO, ACHP, MBCI, other Participating Tribes, the National Trust for Historic Preservation (NTHP), and other consulting parties to develop HMGP Programmatic Mitigation Measures, to be contained within the State-specific PAs as more fully described in Stipulation VII., which will mitigate the adverse effects of the Undertakings; and

**WHEREAS**, as the grantees of HMGP funds, and thereafter managers of HMGP funds, MEMA and GOHSEP will be invited to participate in consultations for, and be signatories to, the relevant State-specific PAs; and

**WHEREAS**, FEMA notified the ACHP on October 24, 2007, of the development of this Gulf Coast HMGP PA pursuant to 36 CFR §800.14, and the ACHP advised FEMA that it would participate in the consultation; and

**WHEREAS**, FEMA recognizes the unique legal relationship that exists between the Federal government and Indian tribal governments, as reflected in the Constitution of the United States, treaties, Federal statutes, Executive orders, and numerous court decisions; affirms the Federal trust relationship with Indian tribes, and recognizes that this historic trust relationship requires the Federal government to adhere to certain fiduciary standards in its dealings with Indian tribes; and commits to working with Indian tribes on a government-to-government basis consistent with the principles of tribal sovereignty; and

**WHEREAS**, FEMA has notified affected Indian tribes of the proposed Undertakings and shall fulfill its tribal consultation responsibilities through ongoing meetings with Indian tribes located within LA and MS, and by contacting tribes located outside of LA and MS that have documented ancestral or cultural ties to the Gulf Coast Region affected by the Disasters as outlined in this Gulf Coast HMGP PA; and

**WHEREAS**, FEMA has consulted the ACHP, LA SHPO, MS SHPO, MBCI, and NTHP in the development of this Gulf Coast HMGP PA; and

**WHEREAS**, FEMA, in coordination with the LA SHPO and the MS SHPO, shall take appropriate measures to notify local governments and the public of the execution of this Gulf Coast HMGP PA and involve them as appropriate during the implementation of the terms and conditions of this Gulf Coast HMGP PA as set forth in Stipulation VIII; and

**NOW, THEREFORE**, FEMA, LA SHPO, MS SHPO, and ACHP agree that the Undertakings shall be implemented in accordance with the following Stipulations to satisfy FEMA's Section 106 responsibilities.

## **STIPULATIONS**

To the extent of its legal authority, and in coordination with ACHP, LA SHPO, MS SHPO, MBCI, GOHSEP, and MEMA, FEMA shall ensure that the following measures will be carried out:

### **I. APPLICABILITY**

- A. This Gulf Coast HMGP PA is limited to the Undertakings (as defined in the Whereas clauses).
- B. Pre-Effective Date and Grace Period Undertakings under consideration for funding under the HMGP Exception are limited to:
  - 1. Retrofitting residential and commercial structures and public and PNP facilities for hazard protection.
  - 2. Elevation of residential and commercial structures and public and PNP facilities.
  - 3. Mitigation Reconstruction of residential and commercial structures and public and PNP facilities.
  - 4. Demolition of existing residential and commercial structures and public and PNP facilities where a prospective acquisition or mitigation reconstruction is proposed.
  - 5. Relocation of public and PNP facilities.
  - 6. Minor, structure-specific flood control projects, such as floodgates or minor floodwalls
  - 7. Retrofit of stormwater management facilities.
  - 8. Infrastructure protection measures.
  - 9. Construction of associated safe rooms.
- C. Standard Undertakings will encompass the full range of eligible hazard mitigation activities.

### **II. GENERAL**

The consulting parties to this Gulf Coast HMGP PA share an interest in minimizing delays during the consultation process set out in this agreement document, and will send and accept official notices, comments, requests for further information and documentation, and other required communication primarily by e-mail or electronic facsimile (fax). The date of the receipt of confirmation that the e-mail message or transmission has been received will be the date used to establish time frames for review. However, if received after 4:30 pm Central Time, the date used will be the next business day.

### **III. TRIBAL CONSULTATION**

- A. As part of the Section 106 consultation for the subsequent identification and evaluation of historic properties, assessment of effects, and development of treatment measures, FEMA acknowledges that certain Indian Tribes (in LA – Chitimacha Tribe of LA, the Coushatta Tribe of LA, the Jena Band of Choctaw Indians, the Tunica-Biloxi Indians of Louisiana, the Caddo Nation of Oklahoma, MBCI, the Quapaw Tribe of Oklahoma, the Alabama Coushatta Tribe of Texas, the Choctaw Nation of Oklahoma, the Seminole Nation of Oklahoma, and the Seminole Tribe of

Florida; in MS – MBCI, Choctaw Nation of Oklahoma, Jena Band of Choctaw Indians, Chickasaw Nation of Oklahoma, Muscogee-Creek Nation, Quapaw Tribe of Indians, and the Tunica-Biloxi of Louisiana) possess special expertise in assessing the NRHP eligibility of properties that may possess religious and cultural significance to the Tribes. These properties include Traditional Cultural Properties (TCP), sacred sites, and other cultural resources. Tribal representatives, Traditional Cultural Authorities, or other religious/traditional practitioners that provide assessments regarding the eligibility of such properties are not required to meet Federal and/or State professional qualification standards.

- B. Specific procedures for Tribal consultations and the specific areas and activities on which individual Tribes wish to be consulted will be addressed in the State-specific PAs developed pursuant to Stipulation VII.

#### **IV. SECTION 106 REVIEW OF PRE-EFFECTIVE DATE UNDERTAKINGS**

Pre-Effective Date Undertakings will not undergo Section 106 review. However, the State-specific PAs to be developed under Stipulation VII will establish measures to mitigate the adverse effects of the Pre-Effective Date Undertakings, as appropriate. FEMA may release funds for the Pre-Effective Date Undertakings after the execution of this Gulf Coast HMGP PA.

#### **V. SECTION 106 REVIEW OF GRACE PERIOD UNDERTAKINGS**

- A. HMGP-eligible historic public and PNP facilities will be excluded from the Grace Period, and FEMA will not release funds for projects involving these facilities until it completes Section 106 review in accordance with Stipulation VI of this Gulf Coast HMGP PA.
- B. Grace period Undertakings will not undergo Section 106 review. However, the State-specific PAs to be developed under Stipulation VII will establish measures to mitigate the adverse effects of the Grace Period Undertakings, as appropriate. FEMA may release funds for the Grace Period Undertakings after the execution of this Gulf Coast HMGP PA.
- C. FEMA will ensure the following provisions for all Grace Period Undertakings:
  - 1. FEMA will conduct a public outreach and education effort to provide information and guidance, including preservation-sensitive tools, techniques, and approaches whose adoption would result in the avoidance or minimization of adverse effects on historic properties.
  - 2. FEMA will notify the public about the 60-day Grace Period and the allowable activities to be covered under the 60-day Grace Period. FEMA will consult with the consulting parties to determine how to carry out this effort.

#### **VI. SECTION 106 REVIEW OF STANDARD UNDERTAKINGS**

Standard Undertakings will undergo review according to the terms of the respective 2004 Statewide PAs, until new State-specific PAs, as defined in Stipulation VII, are executed. FEMA will ensure that appropriate Tribal consultation shall occur for Undertakings subject to the terms of the 2004 LA Statewide PA, and the 2004 MS Statewide PA.

## **VII. DEVELOPMENT OF STATE-SPECIFIC PROGRAMMATIC AGREEMENTS**

- A. To resolve the adverse effects of the Undertakings, two separate State-specific PAs will be developed, in accordance with the requirements of 36 CFR §800.14(b). One agreement document will be prepared for the Undertakings in LA, while a separate agreement document will be prepared for the Undertakings in MS.
- B. Recognizing that FEMA has already commenced State-specific consultation efforts in LA for development of a HMGP Secondary PA, at a minimum, the following parties will be invited to participate in the consultation effort: LA SHPO, ACHP, GOHSEP, MBCI, other Participating Tribes, and NTHP. FEMA has not yet initiated State-specific consultation in MS.
- C. FEMA will extend to GOHSEP and MEMA invited signatory status for the respective State-specific PAs.
- D. FEMA and the other consulting parties to this Gulf Coast HMGP PA are committed within each State-specific PA to identifying and implementing innovative approaches to historic property identification, NRHP evaluations, assessment of effects, and resolution of adverse effects of the Undertakings..
- E. At the time of the development of this Gulf Coast HMGP PA, the full scope of the Undertakings is unknown and many separate actions affecting historic properties may have already occurred. FEMA recognizes that the Undertakings may result in adverse effects on individual historic properties and districts, and acknowledges the potential for other adverse effects, which may include reasonably foreseeable effects caused by the Undertakings that may occur later in time, are farther removed in distance, or are cumulative. Based on the level and extent of adverse effects caused in each State by the Undertakings, FEMA will work with consulting parties on a State-specific basis to craft innovative approaches to mitigation and/or treatment plans. These measures will be included in each of the State-specific PAs.
- F. To assist the consulting parties in better understanding and evaluating the nature and extent of adverse effects on historic properties associated with the Pre-Effective Date and Grace Period Undertakings, FEMA will ensure that quantitative information pertaining to these Undertakings is organized and assembled. This data gathering effort will obtain enough information to constitute a representative sampling of applications that GOHSEP and MEMA intend to propose for funding.
- G. Within 60 days of execution of this Gulf Coast HMGP PA, FEMA will invite all consulting parties to this Gulf Coast HMGP PA, as well as interested Indian Tribes and State government agencies, including GOHSEP and MEMA, as well as any other consulting parties to meet to negotiate the specific terms of each State-specific PA. FEMA may extend this 60-day period in consultation with the signatories to this Gulf Coast HMGP PA. Recognizing the urgency of this matter, FEMA's intent is to conclude consultation and execute both State-specific PAs as soon as practicable. To help inform this effort, FEMA will work with the ACHP, LA SHPO, MS SHPO and other consulting parties, as specified in Stipulation VII, to develop a schedule for State-specific PA consultation and execution. The schedule for the LA State-specific PA, and the schedule for the MS State-specific PA, will be developed in consultation, and shared with, all consulting parties in each respective State.

- H. FEMA shall ensure that each State-specific PA, negotiated in accordance with 36 CFR §800.14(b), includes the following provisions:
1. A discussion of roles and responsibilities for GOHSEP and MEMA;
  2. A discussion of the consultation process to be used in Section 106 reviews;
  3. A discussion of how other consulting parties will become involved in each State-specific PA;
  4. A discussion of how public objection(s), if any, will be resolved;
  5. A public outreach and education effort that will provide information, including preservation-sensitive tools, techniques, and approaches whose adoption would result in the avoidance or minimization of adverse effects on historic properties;
  6. A plan and methodology for implementing the representative sampling of adverse effects, as outlined in Stipulation VII.F;
  7. A tribal consultation protocol, as referenced in Stipulation III.B; and
  8. Measures to mitigate adverse effects of the Undertakings.
- I. If agreement on one or both of the State-specific PAs cannot be reached, FEMA will seek, consider, and respond to ACHP comments in accordance with 36 CFR §800.7.

#### **VIII. PUBLIC NOTIFICATION AND INVOLVEMENT**

- A. FEMA, in coordination with the LA SHPO and MS SHPO, shall notify the public, including local governments, about the terms of this Gulf Coast HMGP PA via press release to the major news organizations in both States. FEMA, in consultation with LA SHPO, MS SHPO, and ACHP shall determine other appropriate measures, such as public meetings in the affected Gulf Coast communities, and the use of Internet web sites, to provide additional information to the public.
- B. Any member of the public may notify FEMA, the relevant SHPO, or the ACHP of concerns it has regarding the implementation of the terms of this Gulf Coast HMGP PA. FEMA and the other consulting parties shall address public objections as part of the ongoing consultation process provided for by the State-specific PAs.
- C. FEMA, in coordination with LA SHPO, MS SHPO, and ACHP, will consider public comments, including those from local governments, at any time during implementation of this Gulf Coast HMGP PA, and following consultation, notify the concerned member of the public of the action that will be taken in response to their comment.

#### **IX. AMENDMENTS, DURATION, AND TERMINATION**

- A. Any of the signatories to this Gulf Coast HMGP PA may request an amendment if circumstances change; if any of the signatory parties is not materially fulfilling its responsibilities under the terms of the Gulf Coast HMGP PA and the future consultations cannot be carried out as outlined; or if it appears that the effects of the Undertakings were not fully considered and addressed by this Gulf Coast HMGP PA. An amendment to the Gulf Coast HMGP PA will go into effect on the date of the signature by the final signatory or an alternative date provided by the terms of the amendment.
- B. Unless terminated, this Gulf Coast HMGP PA shall remain in effect from the date of execution until FEMA, in consultation with all other consulting parties, determines that the terms of this Gulf Coast HMGP PA have been satisfactorily fulfilled. Upon such determination, FEMA shall provide all other consulting parties with written notice of the determination.

- C. FEMA, LA SHPO, MS SHPO, or the ACHP may terminate this Gulf Coast HMGP PA by providing 30 days' written notice to the other consulting parties, provided that the consulting parties shall consult during this period to seek amendments or other actions that would prevent termination.
- D. Termination or withdrawal by any signatory of the Gulf Coast HMGP PA, as described in this Stipulation will not terminate or nullify either of the State-specific PAs identified in Stipulation VII, nor terminate or nullify any other PA pertaining to FEMA's administration of the HMGP for the Disasters. Such State-specific PAs and other PAs shall only terminate according to their own terms.

## **X. DISPUTE RESOLUTION**

- A. Should any signatory object to FEMA within the timeframes provided to any plans, specifications, or actions provided for review pursuant to this Gulf Coast HMGP PA, FEMA shall consult further with the objecting party to seek resolution.
- B. If FEMA determines that the dispute cannot be resolved, FEMA shall forward its proposed resolution of the dispute and all documentation including all views of the parties and the public about the issue in dispute, LA SHPO or MS SHPO's opinion of the proposed resolution, if any, and any other relevant documentation to the ACHP. Within 15 days after receipt of all pertinent documentation, the ACHP will take one of the following actions:
  - 1. Advise FEMA that it concurs with FEMA's resolution of the dispute;
  - 2. Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute; or
  - 3. Notify FEMA that it shall comment pursuant to 36 CFR §800.7(c), and proceed to comment. Any comment provided shall be taken into account by FEMA in accordance with 36 CFR §800.7(c)(4) with reference to the subject of the dispute.
- C. If the ACHP does not provide FEMA with comments or recommendations within 15 days, FEMA may assume that the ACHP does not object to its recommended approach and it shall proceed accordingly.
- D. Any recommendation or comment provided by ACHP shall be understood to pertain only to the subject of the dispute, and FEMA's responsibilities to fulfill all actions that are not subject of the dispute shall remain unchanged.

## **XI. EXECUTION AND IMPLEMENTATION OF THIS GULF COAST HMGP PA**

- A. This Gulf Coast HMGP PA shall become effective immediately upon signature by all signatory parties.
- B. For all signatory parties, this Gulf Coast HMGP PA shall be executed in counterparts, with a separate signature page for each signatory party, and FEMA shall provide each consulting party with a complete copy of the executed Gulf Coast HMGP PA including all signature pages.

**EXECUTION OF THIS GULF COAST HMGP PA** by all signatory parties and implementation by FEMA evidences that FEMA has taken into account the effects of the Undertakings on historic properties.



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**SIGNATORIES:**

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

By: David I. Maurstad  
David I. Maurstad  
Assistant Administrator  
Mitigation Directorate

Date: 12/06/07

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(GULF COAST HMGP PA)

SIGNATORIES:

LOUISIANA STATE HISTORIC PRESERVATION OFFICER

By: Pam Breaux  
Pam Breaux, State Historic Preservation Officer

Date: 12-12-07

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SIGNATORIES:

MISSISSIPPI STATE HISTORIC PRESERVATION OFFICER

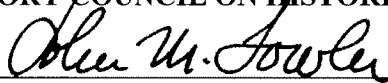
By: H. T. Holmes  
H.T. Holmes, State Historic Preservation Officer

Date: 12.10.2007

**PROGRAMMATIC AGREEMENT AMONG  
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**SIGNATORIES:**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By:   
John M. Fowler, Executive Director

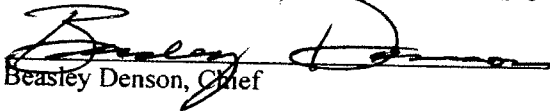
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**CONCUR:**

**MISSISSIPPI BAND OF CHOCTAW INDIANS**

By:

  
Beasley Denson, Chief

Date:

1-11-08